

CR15-00707-SRB DEFENSE CLOSING ARGUMENT 3-11-16

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
Plaintiff,)	
)	CR15-00707-PHX-SRB
vs.)	Phoenix, Arizona
)	March 11, 2016
Abdul Malik Abdul Kareem,)	
)	
Defendant.)	
)	
)	

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE
EXCERPT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY #16
EXCERPT: DEFENSE CLOSING ARGUMENT

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E X C E R P T O F P R O C E E D I N G S

THE COURT: Mr. Maynard, you may make your closing argument.

MR. MAYNARD: Thank you, Your Honor.

And thank you, ladies and gentlemen of the jury.

I agree with the government in one thing, and that is that this has been a long trial. Mary, Abdul Malik, and I want to thank you for your patience and for your attention that you paid in this case because there's an awful lot of evidence.

All this evidence wasn't really necessary. What the government has done in this case is tried to deal with your fears, the fears that we have about the unknown, about al-Qa'ida, about ISIS, about homegrown terrorists.

And they've paraded in front of you all of these guns, all of these weapons, all of this material, pictures, and videos and stories of people being burned alive, having their heads cut off. And, yeah, it's all happening and it's horrifying and terrifying. But this case is about is about whether my client, Abdul Malik, conspired with Soofi and Simpson to do what they did.

There's no question there was a conspiracy in this case. Simpson and Soofi were in a conspiracy. They decided that they were going to travel across state lines and attempt to commit murder and assault people in Texas.

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1 There's no question that Officer Stevens was the kind
2 of police officer we would all like to have in our community.
3 He did exactly what we want a police officer to do. In fact,
4 he went well beyond the call of duty.

5 The idea that he is standing there, a motorcycle
6 police officer, and two guys drive up in a car, stop, and get
7 out with automatic weapons, and he has the wherewithal and
8 state of mind to pull his gun and shoot those two before they
9 do any damage or harm to anybody, they should be making a
10 statue to him. I mean, that's the kind of police officer we
11 all want in our community.

12 But this case is about the government deciding they
13 need to find somebody else because the government messed up in
14 this case. And Agent Whitson told you at the very beginning:
15 Simpson was a convicted felon. He had lied to the FBI.
16 People believed that he was a terrorist. He should have been
17 watched closer. Nobody but nobody seems to have gone to his
18 apartment after he had been convicted back in 2011.

19 But the FBI seems to have known sometime on May 2nd
20 or May 3rd, at least, at least as of May 3rd, that he was
21 traveling to Dallas, Texas, or Garland, Texas, to commit an
22 act of terror.

23 They sent his picture. They sent information
24 concerning what the car looked like. And it did no good.
25 They were embarrassed by this. So they went out and they

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1 started looking. And they did the right thing. Was there
2 anybody else involved? Was this just two people? Or were
3 there more?

4 But what happened is is after they interview Stefan
5 Verdugo, my client becomes the target and all the resources,
6 everything else, is geared towards looking at and convicting
7 him. Not getting to the truth, not getting to what really
8 happened, but let's get a conviction.

9 That's not what our justice system is about here in
10 this country. Our justice system is supposed to be based upon
11 going out, gathering the evidence, determining if a crime has
12 been committed, determining who committed the crime, and then
13 prosecuting them.

14 It's not a matter, as you were being told, "our
15 witness" or "their witness." These are witnesses to the
16 event, whether they're put on by the government or they're put
17 on by the defense. Those weren't my witnesses. Those were
18 the witnesses that were out there that should have been put on
19 by the government to tell you what this case was about.

20 And the government failed to put on an awful lot of
21 witnesses in this case because they're not -- the government
22 isn't concerned with finding the truth. The government is
23 concerned with getting a conviction.

24 And you know what? This isn't a game. It's not who
25 wins and who loses. That's not what this is supposed to be

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1 about. There's a man's life that's at stake.

2 It's not: Let me marshal the evidence to support my
3 case.

4 It's: Let me give the evidence to the jury, to the
5 citizens of this country, and let them decide who's guilty.

6 That didn't happen here. That's why we had to bring
7 in 13 witnesses in this case.

8 I'm going to spend a moment with you just looking at
9 the jury instructions. The Court has gone through them, but I
10 want to focus on a couple.

11 One is on page 12. Look, this is concerning
12 Conspiracy in Count 1. Was there a conspiracy? Absolutely,
13 there was a conspiracy. Simpson and Soofi were in a
14 conspiracy.

15 The real question is Two: The defendant became a
16 member of the conspiracy knowing of at least one of the
17 objects and intending to help accomplish it.

18 That's the issue you have to decide. The rest of
19 this stuff you really don't. That's the ultimate issue here.
20 Did he become a member of that conspiracy?

21 Looking at page 14 on Count 5. Again, number Two:
22 The defendant became a member of the conspiracy knowing of its
23 unlawful object and intending to help accomplish it.

24 That's the issue you have to decide. This other
25 stuff, they're the elements of the crime, but there's no

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1 question Soofi and Simpson did them. There really isn't.
2 That's the issue.

3 Look at the conspiracy statute on page 17. This is
4 awful important because the Judge has instructed you that the
5 conspiracy is a form of a partnership. But just -- it's not
6 enough, however, that they simply met, discussed matters of
7 common interest, acted in similar ways or perhaps helped one
8 another. I mean, the government wants to say that because my
9 client went out shooting in the desert sometime in January,
10 that promoted the conspiracy.

11 The Garland contest hadn't even been announced by
12 then. It didn't get announced until February 11th. This
13 conspiracy is concerning going to Garland, Texas. Read the
14 instructions carefully. It's about going to Texas to commit
15 an act of murder or attempted murder.

16 Also, the government has instructed you that, "One
17 becomes a member of the conspiracy by willfully participating
18 in the unlawful plan..." It goes on, "On the other hand, one
19 who has no knowledge of a conspiracy, but happens to act in a
20 way that furthers some object or purpose of the conspiracy,
21 does not thereby become a conspirator. Similarly, a person
22 does not become a conspirator merely by associating with one
23 or more persons who are conspirators, nor merely by knowing
24 that a conspiracy exists."

25 There were lots of people that testified here that

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1 knew that Simpson and Soofi were becoming different. They
2 were becoming more radical. Their form of Islam was different
3 than other people's. We had Mr. Mubarak come in. My client
4 testified. We had a number of folks that came in and
5 testified about that.

6 The same thing with aiding and abetting. The
7 question becomes, "The defendant aided, counseled, commanded,
8 induced or procured that person in committing the crime of
9 conspiracy."

10 "The defendant acted with the intent to facilitate
11 the conspiracy."

12 He has to know what they're going to do. There's no
13 evidence that he knew what they were going to do. There's no
14 evidence that anybody knew exactly what they were going to do
15 except for one person, Nathan Soofi, the little boy who came
16 in here. And we'll talk about him later because he becomes
17 very important.

18 It helps to counter his uncle's testimony, but he
19 also tells you that he told the government this and he told
20 Agent Whitson and these prosecutors that he knew that his dad
21 was going to Texas.

22 And when I asked Agent Whitson on cross-examination:

23 Did anybody other than Carlos and Juan and Verdugo
24 ever tell you that they knew that there was going to be this
25 Muhammad Drawing Contest in Garland, Texas, before the event?

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1 He said: No.

2 Yet three weeks earlier in their offices Nathaniel
3 Soofi had told them that he knew about it. But they didn't
4 put him on the stand. And you've got to sit there and wonder
5 why. Was this a search for the truth? If it was a search for
6 the truth, why didn't the government put him on?

7 Count 2 is on aiding and abetting. The question is:
8 Did my client know? And the question is he did not -- or the
9 answer is he did not.

10 Now, let me get to the easy one, Count 4, Felon in
11 Possession. My client had two guns. My client had two felony
12 convictions. He didn't have a right to have the guns. He
13 might have been a knucklehead because he thought that if he
14 changed his name, he wasn't the same person. And he might
15 have thought that after four years these are felony
16 convictions but they're DUIs, that somehow or another they
17 went away.

18 I don't know that most people would know that a
19 felony DUI is something that would prohibit you from getting a
20 gun. One can certainly go and petition to try to get the
21 right to bear an arm and to vote and do the many other things
22 that one -- but he didn't do that. I think the evidence is
23 pretty clear on that one, so I'm not going to spend a lot of
24 time on Count 4.

25 I'm going to focus on the other counts. We need to

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1 go through and look at some of this evidence together. And
2 I'm going to start with the -- one of the very first witnesses
3 that the government put on.

4 And I will tell you, I'm not good with computers.
5 You saw during the course of this trial whenever it came to
6 electronics, Mary handled all those things, so I don't have a
7 PowerPoint. I just -- I'm not very good. So I'll put a
8 couple of pictures up for you and things, but that's it.

9 Mr. Mubarak came in here. And although you probably
10 don't have his picture in your book, I don't think anybody is
11 going to forget what he looked like when he walked in here.
12 It's the fellow dressed in white.

13 Why did the government bring him in here? I'm not
14 sure, except I think they were hoping that he was going to say
15 that my client was telling everybody that there was a Khalifah
16 and that he believed in the Khalifah.

17 What did Mubarak say? He said my client came to him
18 and asked him about whether there was a Khalifah or not, the
19 head of the new Caliphate, the head of ISIS.

20 And he told him no, hell no. There isn't any more
21 Khalifahs. There's no more Khalifahs since the Prophet.

22 And he questioned him some more because this was a
23 man that he went to because Mr. Mubarak had been a Muslim for
24 a much longer time. And he eventually called his son and had
25 his son speaking to my client. And he said he was respectful.

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1 He didn't argue with him. But his son confirmed there was no
2 Khalifah and that was sort of the end of it.

3 Now, Mr. Mubarak also went on to tell us that in the
4 summer of 2014, that my client became disenchanted with
5 Mr. Simpson because of things he was doing and also because he
6 thought that he had planted some sort of tracking device or
7 something in his car and was trying to get him to leave and
8 actually got Mubarak to come over with a couple of his friends
9 and they threw him out.

10 Lastly, what Mr. Mubarak told us, which becomes
11 rather important, is that my client lived with him for a week
12 to two weeks, sometime in either February or March. He
13 thought it was probably March. He wasn't sure. I'm going to
14 let you rely upon your own recollections, because he was
15 having some problems.

16 Well, why does that become important? Because we're
17 going to have to deal with Ali Soofi. Because, you know, if
18 you believe Ali Soofi and you think he's telling the truth,
19 he's guilty as hell.

20 Ali Soofi is a liar. And this isn't Perry Mason. I
21 can't get Ali Soofi to say, "Oh, my goodness, I told a lie,"
22 and, you know, the station is over for the day.

23 When you're cross-examining somebody and you think or
24 you believe that they're lying on the stand, you have to do it
25 in a way by looking at what other people say, letting you rely

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1 upon your logic, seeing if there are inconsistent statements
2 that they have made prior, or does it just make any sense at
3 all what he's talking about.

4 And one of the reasons I was -- I asked Mubarak about
5 my client living with him in the spring for several weeks is
6 if my client is staying over at Simpson and Soofi's two and
7 three nights a week, why does he need to stay at Mubarak's?
8 Why can't he just stay with him them? That makes no sense.
9 Somebody's -- something is wrong here.

10 There are four witnesses that the government has
11 relied upon in this case: Stefan Verdugo, the man in orange,
12 the two young men, young boys that lived across the street,
13 Carlos and Juan, and Ali Soofi.

14 Those are the four that I really have to deal with
15 the most.

16 Now, Stefan Verdugo. He lived with my client off and
17 on for a number -- for about a year-and-a-half. He was there
18 back in 2014. He becomes very important in this case because
19 the government relies upon him.

20 What the government told you he said he said. The
21 question is: Is it truthful or is it a lie? And I contend
22 that the vast majority of what came out of his mouth was a
23 lie.

24 Now, Stefan said that he had gone shooting with
25 Simpson and Soofi and Abdul Malik on at least two occasions

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1 and he said he told the FBI where that was. It was somewhere
2 off of -- I think it was Table Mesa Road up in the northern
3 part of the county.

4 When the FBI learned where -- about where my client
5 had been shooting with Sergio, they sent a team out there.
6 They took pictures. They videotaped it. They audiotaped it.
7 They had pictures and flags and everything else. They picked
8 up shells and brought them in here to show you.

9 Why couldn't they do the same where Stefan Verdugo
10 told them? Because it didn't happen. They weren't able to
11 find any place where Stefan Verdugo could -- had told them
12 that there had been shooting because it didn't happen.

13 My client went shooting with Simpson and Soofi one
14 time and that was with Sergio Martinez. That was it. Stefan
15 Verdugo lied.

16 Stefan Verdugo made a number of comments about what
17 he heard and he tried to say on direct examination, and even
18 on cross-examination, if we could verify that by talking to
19 Daniel. He mentioned "Daniel" a number of times. And if you
20 recall, I asked him at the end of the cross -- was that --
21 what Daniel was that? Was that Daniel VanHook? And he said
22 yes.

23 Now, I'm going to show you part of Stefan Verdugo's
24 testimony. And I just made a copy of it. I didn't make a
25 nice PowerPoint for you.

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1 And he said something happened in France.

2 And he said: Yes.

3 And do you remember what the attack was about?

4 It was about people drawing the Prophet Muhammad.

5 And what happened in Paris, do you know?

6 They ran into Paris and shot people that drew the
7 pictures of Muhammad.

8 And then I went on and asked him a number of
9 questions.

10 So what was the reaction of D, Ibrahim and Soofi?

11 And he tells us that the news that these people had
12 conducted this attack in Paris on the magazine.

13 They were -- they were upset. They were mad that
14 their Muslim brothers had gotten killed over trying to avenge,
15 I guess, their Prophet.

16 Now, what became important in that questioning was
17 what he says here.

18 Okay. Who else was there with you?

19 It was me -- me, D, Daniel, Elton, and Soofi. We
20 were all -- they were like in the living room area and me and
21 Daniel were standing in the -- like the kitchen.

22 We put Daniel VanHook on the stand. What did Daniel
23 VanHook say?

24 Did you ever hear anything about -- within those
25 conversations about a contest in Texas of drawing the Prophet

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1 Muhammad?

2 No.

3 And did you ever hear anything about any mention of
4 the attack in Paris, a Charlie Hebdo attack, between Ibrahim
5 and Decarus Thomas?

6 The answer was: No.

7 Additionally, Stefan Verdugo told us:

8 And did you hear ISIS used in your presence?

9 Yes.

10 Can you tell us how it came up?

11 There was a thing on the news about ISIS. And it was
12 me, Daniel, and D. We were sitting in the living room. And D
13 started telling us that he was part of ISIS. And we
14 thought -- like we thought it was kind of funny at first, you
15 know, and then D started getting really crazy about it.

16 We asked Daniel VanHook:

17 And during that time -- and I want to focus on from
18 November 2014 to when Decarus moved out of the Cochise house.

19 That's the time period that Verdugo was living with
20 him.

21 During that time were you ever with Stefan when
22 Decarus told you he was part of ISIS?

23 No.

24 Did Decarus ever tell you he was part of ISIS?

25 No.

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1 Additionally, you might recall that Stefan said that
2 he had moved out in March of 2015. And I asked him a number
3 of times about was he sure it wasn't January.

4 No, it was March.

5 We asked Mr. VanHook did he ever make a call to
6 Decarus or rather -- I keep thinking Decarus from the thing --
7 to Abdul Malik about letting Stefan move back in.

8 And he said: Yes.

9 Stefan in the spring of 2015 was having a financial
10 hard time. He had lived with a guy by the name of Nick Love.
11 He had also moved into some Budget Hotel. Didn't seem to have
12 a job and wanted to move back in with Abdul Malik and had
13 asked VanHook to make the call for him.

14 VanHook made the call for him.

15 And Decarus said no. He didn't want to have anything
16 to do with Stefan Verdugo anymore.

17 Stefan lied when he said that he didn't have VanHook
18 make that call.

19 Stefan Verdugo would have you believe that my client
20 is going to commit an act of terror in Texas that isn't --
21 that the event is not announced until February 11th. I think
22 the evidence shows that Verdugo moved out in January.

23 And I go to Amber Pluff, the woman that the
24 government brought in. And I'm not sure why, but I think they
25 were hoping that she was going to confirm that there was a

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1 ride in a car that she participated in, but she hadn't really
2 heard any conversation.

3 But what she did tell us was that she started dating
4 Stefan Verdugo the first of March. And that it was her
5 understanding that he had been living the prior several months
6 with Nick Lowe, which now puts us back into January.

7 And you know, I felt sorry for the poor woman. I
8 mean, what comes out of her examination is that Stefan Verdugo
9 is about as low a life as one is going to be. He meets this
10 girl in March and by the summer he is kidnapping her, selling
11 her to men, and when that gets found out, he takes off and
12 goes to California.

13 All during this time he's helping the FBI. He's the
14 confidential informant that they have had. He's the one
15 they're relying on. He's the one that's met with them on May
16 8th and they have now relied on him, Stefan Verdugo, the man
17 in orange, to start trailing my client 24 hours a day.

18 Now, you've got to ask yourself. Stefan Verdugo also
19 said I made telephone calls for the FBI to Abdul Malik. Why
20 would he do that? Well, they're trying to get evidence to
21 show that, you know -- and rightfully so. That's exactly what
22 they're supposed to do.

23 You didn't hear one telephone call played by the FBI.
24 Why? Because there's nothing there. I mean, if Stefan
25 Verdugo had heard my client say: I was going to go to Dallas

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1 or Garland, Texas, and I decided not to, don't you think he
2 would have gotten on the phone and said to him: Boy, Malik,
3 am I really glad you didn't go to Garland. I'm glad I helped
4 talk you out of it or I'm glad you decided to change your mind
5 or isn't that terrible what happened to those guys or, boy,
6 I'm glad you're still alive. Something. There would have
7 been something. There's nothing.

8 What else did we learn from Stefan Verdugo? That the
9 FBI -- they wired him up. And they had him ask to go back and
10 work for Abdul Malik. And Abdul Malik wasn't going to live
11 with Stefan but he did let him work for him for a while.

12 You would have thought there would have been
13 something in those conversations that you would have heard
14 that would have supported the government's case, but there
15 isn't. There wasn't. Because Stefan Verdugo was lying. It
16 didn't happen.

17 The government relies on two young boys that lived
18 across the street --

19 Oh. And Stefan Verdugo, when I asked him on
20 cross-examination did you get paid \$500?

21 Yes.

22 Why?

23 I don't know. Gas money.

24 Well, the FBI later on tells us through Agent Whitson
25 that, well, it wasn't just gas money. He had outstanding

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1 tickets. And we wanted to make sure that they were paid.

2 They didn't pay them. They gave him \$500.

3 And they didn't give him any incentives to testify,
4 for goodness sakes. No. They went and met with him in the
5 jail down at South Buckeye where he had been sitting since
6 June and they knew he was down there because the FBI assisted
7 in bringing him back from San Diego. But the FBI had a
8 constitutional mandate or obligation to provide a statement to
9 Mr. Verdugo that might help him in his case that's in Maricopa
10 County.

11 But you know what? That constitutional obligation
12 somehow or another didn't rise like cream coming to the top
13 until the day after they met with him.

14 So they go and meet with him in December, right
15 before this trial is going to start, talk to him about what
16 he's going to testify to, and tell him that we're not giving
17 you this as an incentive but we're going to -- we're
18 constitutionally required to tell the County Attorney what you
19 did and what we saw.

20 I don't know why that constitutional mandate didn't
21 seem to come to their attention in July or August or
22 September, October, November, but it came to their attention
23 right before he's going to testify. And he came in here on
24 their own, as you were just told. Had nothing. His civic
25 duty to come in here.

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1 Carlos and Juan. Carlos is the younger boy with the
2 long hair and he said he really never heard my client talk
3 about going to do anything just horrible. There was no
4 mention of the attack.

5 He said that he had heard that my client was going to
6 give Ibrahim an AK47. He said that there may be something
7 about this Muhammad Drawing Contest that was going on in
8 Garland. He had heard about that but he didn't know that my
9 client was going to go attack them or not.

10 But he heard about the contest. And one of the
11 things one does on cross-examination is you ask them questions
12 and try to figure out when they heard it and who is there.
13 And he said he heard it somewhere between --

14 First, he thought it was before Christmas of 2014 and
15 then he said he thought it might even be before Thanksgiving
16 of 2014.

17 Well, it's not announced until February 11th of 2014.

18 Well, you might think, well, he just doesn't remember
19 the date --

20 THE COURT: Excuse me. Did you mean '15?

21 MR. MAYNARD: '15. Thank you.

22 He might just not remember the dates. Most kids
23 remember when Christmas happens and they know when the big
24 events happen versus the bad events.

25 Now, what was more interesting was Juan. Juan was

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1 the older brother who was 15 years old who got on the stand.
2 That is -- and some sort of ROTC or something.

3 And Juan told us that he heard about the Muhammad
4 Drawing Contest on three separate occasions. The first one,
5 his brother Lupe was living there in the house because my
6 client constantly let people live there with him. They came
7 and they went.

8 We heard -- nobody contradicted that he had all kinds
9 of people coming in. He had homeless people staying there.
10 He had homeless people that had children staying there. Must
11 be a pretty good cook, because everybody talked about eating
12 his food and coming over to -- he would cook for almost
13 everybody in the neighborhood.

14 But Juan's conversation was interesting because he
15 has three separate occasions when he hears about this. The
16 first one is when his brother Lupe is there.

17 And I asked him: If we know when Lupe lived there,
18 then we'll know when that happened.

19 And he said: Yes.

20 Well, the only testimony concerning Lupe was from my
21 client. The government didn't bring Lupe in to ask him. My
22 client said he lived there for the month of October of 2014.

23 That's it. It's uncontradicted.

24 They could have brought in Lupe. Could have brought
25 in his mother from across the street. Could have brought in

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1 any of these people. Didn't do it. But he says he's in there
2 watching -- he's playing a video game. He sneaks down the
3 hallway. He hears Simpson and Abdul Malik talking about this
4 Garland, Texas event.

5 Well, couldn't happen when he said it did, but let's
6 assume it happened anyway.

7 What's the conversation? The conversation is that
8 the known terrorist Simpson is trying to talk him down. You
9 know, Abdul Malik, don't go. Don't go to Dallas. You know,
10 you might get killed. I mean, that's terrible. Don't do it.

11 And so he goes back to the room. The next time he
12 hears about this is -- he's in the car and he's in the car
13 with his brother. And he and his brother both have ear buds
14 in.

15 The brother seems to be listening to music. He does
16 not seem to be listening to music because he's looking down
17 and he knows that exactly this conversation that Abdul Malik
18 was on with Simpson on a bluetooth took exactly ten minutes.

19 And he doesn't have any music in so he can hear the
20 whole conversation. And then again, it's about this attack in
21 Garland that Malik is going to go and he's going to shoot
22 people in Dallas. Garland, Texas. He's also thinking about
23 blowing himself up. He's going to strap dynamite to himself
24 and go into a mall because he's so angry with what's going on.
25 That's the second conversation.

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1 The third one is we're back to the house again and
2 it's sometime around Christmas but we're not sure. It could
3 be after Christmas. And he sneaks down the hall. But this
4 time there are three people. It's Simpson, AK Waseem, and
5 Abdul Malik.

6 And he hears the three of them and he's seeing them
7 through this mirror that seems to be only -- he sees them but
8 they don't seem to see him. But he hears them talking again.

9 And again, they're talking -- they're trying to talk
10 him down because he is so angry about what's going on in
11 Garland, Texas, that he's going to go there to shoot people.
12 But he's also thinking that he may put dynamite on his chest
13 and go to a mall.

14 And I asked him the question, you know, was he going
15 to go to the mall first or was he going to go to Garland?

16 Oh, he was going to go to the mall.

17 So he was going to go to the mall and blow himself
18 up?

19 But Simpson told him, gee, if you do that, you can
20 spend your life in prison. But after he blew himself up, that
21 was when he was going to go to Garland, Texas, and commit
22 these heinous acts that he is now sitting here in front of
23 you.

24 That was his testimony. That's what they want you to
25 believe because they don't care what the truth is. They're

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1 looking for a conviction. That's pitiful. Relying on that
2 testimony is just pitiful.

3 Sergio. Sergio came in here and I think Sergio told
4 the truth. There was -- I mean, scared to death, as anybody
5 would be under these circumstances.

6 He thinks he's now taken out to shoot in the desert
7 two guys who have now committed an act of terror in another
8 state. And when he was first asked by the FBI, Did you do
9 this? And he said, No. And then they cautioned him that
10 lying to the FBI could be a crime, he said, Yeah, I did. You
11 know, he was scared to death.

12 But he said exactly what happened. That sometime in
13 January my client drove out there with Simpson and Soofi. He
14 had called him for several weeks saying, you know, can I come
15 out there and shoot guns? In fact, the government would have
16 you believe that he wanted to go out there and find the place
17 that was in the desert that was remote and quiet.

18 That's not what Sergio said. Sergio said he called
19 and asked can we go to your mother's house and shoot? And
20 Sergio said, no, I don't want to shoot rifles here because
21 it's too noisy.

22 So they went to Sergio's. Played basketball. Jumped
23 on the trampoline. And eventually, Sergio was -- and what
24 happens? Soofi takes the guns out of the car and brings them
25 in. And they have a show-and-tell with Sergio. And Sergio

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1 thinks -- he thinks all the guns belong to Soofi.

2 And he is showing them the new gun that he's gotten
3 for Christmas. They're showing him what they have. And then
4 they go off and they drive five or ten minutes down the road
5 to an area that -- that Sergio knows and that's where they
6 shoot. And they shoot for some period of time. And it's in
7 the evening and it's dark and you can see the flash from the
8 guns at the end of it and the kids are wearing headlamps.

9 Now, Sergio then takes the government out there and
10 shows them exactly where he took them to shoot. They find all
11 kinds of ammunition and he cooperates as fully as he possibly
12 can.

13 The government spent a lot of time going through all
14 of this stuff and going through all of these computers and all
15 of this electronic material. And there's absolutely no
16 question that when you look at the electronic equipment that
17 was at Soofi's and Simpson's, it is loaded with what one would
18 believe are radical materials.

19 They kept -- they keep wanting to go back to saying
20 that my client had radical stuff on his stuff. Clearly, the
21 Lenovo that was taken in 2012 has that type of material on it.
22 But back then, he said from the very beginning, and Agent Nash
23 even confirmed it, he always said that thumb drive, I don't
24 know what's on it and it's not mine. I didn't have anything
25 to do with it.

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1 And in 2014 when they call him and tell him you need
2 to come pick this up, he initially says I don't want the
3 Lenovo back. You guys have probably put something in it and I
4 don't want it.

5 And they're -- you know, you've got to come get it
6 back. You can sell it. You can do what you want with I. And
7 Agent Nash told us just two days ago that that conversation
8 only took about five or eight minutes.

9 Now, the government, you know, wants you to think
10 what was my client supposed to be telling them at that time.
11 He comes and he picks up the computer. Agent Nash says I
12 didn't interrogate him. I didn't ask him questions. I
13 just -- I'm in the parking lot and he's telling me things.

14 Well, what's he telling you? Jeez. At this point
15 I'm not having much to do with Simpson because I threw him out
16 of the house after the summer of 2013. That's -- you know,
17 the thumb drive, he takes it and he signs the receipt. But
18 what does he do with it? He destroys it because he doesn't
19 want it anymore.

20 What does he do with the Lenovo? He really doesn't
21 want it anymore but he owes money to Sergio. So he tells
22 Sergio, look -- you know, Sergio says, well, you can pay me
23 back in part by giving me the Lenovo. So they try to clean
24 the Lenovo. If there's anything on it and they don't know
25 what's on it, they don't want these children to see anything.

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1 And he gives it to him. And the understanding is
2 both my client and both Sergio tried to clean the Lenovo
3 computer. Apparently, didn't do a good job. There's a lot of
4 stuff that's still on it, but he certainly didn't give it to
5 Sergio to use with his children thinking that it was loaded
6 with stuff that they shouldn't see.

7 The government brought in the individual who sold my
8 client the .38 and my client doesn't deny he went out there
9 and he bought that .38 at night. He had gotten it off
10 Backpage. Called him up and paid \$350.

11 Why is it important there's \$350? It really goes to
12 the credibility of the individual who was selling the gun. I
13 mean, what he told you was that, "This was only the second gun
14 I had ever sold."

15 He had just -- and I pointed out, he had just bought
16 that gun about 30 days prior to this sale going on. Well,
17 this is a guy who's bought a gun. He's selling it for more
18 than he paid for it and he's selling it out of the trunk of
19 his car at night.

20 And this is his second time? No. I mean, he sat
21 there and -- look, when I do these deals, you know, nobody
22 brings big wads of cash because they're going to get robbed.
23 I always park under a light so that everybody can see me. If
24 this is his second time, how does he already have a process
25 that he goes through?

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1 He doesn't want to have the government coming after
2 him, so he's sort of backing up and trying to walk away from
3 this thing.

4 And my client says, yeah, that's the guy. I gave him
5 a card. He told me that he was looking for a job because he
6 was sort of down on his luck. I told him that my jobs are
7 seasonal. Give me a call. And maybe I will have something
8 for you later on.

9 Now, he says that my client said he was in the market
10 for a bunch of guns. My client says no. He offered to sell
11 me a .22 and I didn't want a .22.

12 My client certainly didn't go out and buy any more
13 guns after that. There's no evidence that he bought any more
14 guns. In fact, you now have to ask yourself -- the government
15 keeps saying that my client provided either the money, the
16 guns, or the ammunition.

17 Who brought in Robert Abke? Robert Abke was a fellow
18 that we brought in who sold 800 rounds of ammunition to
19 Simpson and Soofi in the course of a week in January of 2015
20 for those assault rifles and they knew it. He had been
21 interviewed by them.

22 They knew who sold that ammunition and they chose not
23 to bring him in here. Why? I mean when Abke testified, Do
24 you know him? Have you ever seen my client? What was the
25 answer? No.

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1 Put a picture of Simpson.

2 Yeah, that looks like him.

3 Soofi.

4 I'm not sure, but that looks like him.

5 They had the text messages from Bunker Bob but chose
6 not to tell you about them because they don't want to know the
7 truth. They want a conviction.

8 When we started putting on evidence in this case, I
9 started off in what I hoped would be a chain of events that
10 had occurred on May 3rd. I brought in Dunston Simpson, Jr.
11 who was his brother that was killed. Why? Because he's the
12 one that starts the dominoes falling that tells how my client
13 learned of Elton Simpson's demise.

14 Dunston got a call from a reporter. Dunston
15 doesn't -- tries to get in touch with his brother. Isn't able
16 to get in touch with him. The reporter apparently has told
17 him that it looks like your brother may have been involved in
18 an event in Garland, Texas.

19 Dunston doesn't even know where his brother lives.
20 Now, he told us that his brother had gotten closer to the
21 family in the last three or four months, but he doesn't know
22 where he lives so he doesn't know where to go.

23 So he starts calling people that he thinks know his
24 brother and he gets Stuart Sampson who we brought in. And
25 Stuart Sampson says I told Dunston while I'm on the phone with

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1 him I'll ride down to your brother's place and see if he's
2 there.

3 And so he drove over to the apartment which was not
4 too far from the mosque. He goes up. Nobody comes to the
5 door. But he looks -- looks like there are people or vehicles
6 outside. He gets back in his vehicle. Drives back to the
7 mosque. And by the time he gets there, he's grabbed,
8 handcuffed, and put on the ground and it's the FBI doing an
9 investigation on this.

10 Once they finally let him go, he calls his brother
11 and he calls my client. Where are they? I mean, my client is
12 sitting there -- a co-conspirator, knowing that these guys
13 have gone to Garland, Texas, to commit this heinous act, you
14 would expect he would be sitting there on pins and needles
15 waiting to see if they succeeded or not succeeded.

16 He's chowing down at Red Lobster with his nephew who
17 has just come into town on May 1st. And I put his nephew
18 Anthony Sampson on the stand to tell you what his reaction
19 was. The reaction was it was shock and amazement. He
20 couldn't finish his meal. They had to put it in a to-go box
21 and he leaves.

22 And he goes by to see what's going on over at Soofi's
23 and Simpson's and it's covered with police officers.

24 So now he goes to AKs. And AK is mad at him and is
25 not answering his phone calls, so we have seen all these text

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1 messages where he's saying, "Pick up the phone. I've got to
2 talk to you."

3 So he goes there and he sees him. And they go back
4 and go to Soofi's and Simpson's place and they can't get in
5 there because there's so many police officers.

6 So what do they do? They go to Dunston Simpson,
7 Sr.'s house. If he's committed this conspiracy and knows that
8 these people have died, is he going to go see the fellow
9 that's died's father?

10 And when they go in and they see his dad, they look
11 at the news and they're trying to determine what's actually
12 happened and they can't figure it out. Although he seems to
13 recognize the car and says that, geez, it looks like Nadir
14 Soofi's car but they're still not sure.

15 What also was important when I put Dunston Simpson,
16 Sr. on the stand was I asked him whether he had received his
17 son's car registration. All right. And we'll get to that in
18 a minute, but you'll recall that I asked the government --
19 now, I put in -- we put into evidence, not the government --
20 the document that the FBI had found in Soofi and Simpson's
21 apartment. They had sent it back to Quantico, Virginia. They
22 had it electrostatically tested.

23 Agent Whitson then prepares a 302 report concerning
24 the document. And what does the document show? Well, the
25 original document which is Exhibit 553 doesn't show us too

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1 much. But what they were able to find, which is Exhibit 554,
2 is this. And again, I don't speak Arabic but then:

3 Dear brother in Allah. Glory be to God. There was a
4 change in plans indeed. Something dreadful came up. The
5 money that I had from you was being used for what was needed
6 for the initial plan but that changed. This money is what
7 your left over --

8 I don't know what the next word is.

9 I will leave you with the title of my car to do as
10 you please with it. I believe Abdul Malik knows how to get it
11 notarized. I was also going to give you my tax return but it
12 won't be here in time. Please forgive me if you do not get
13 all the money back.

14 Always fear Allah and keep me -- on and on.

15 Why is that important? Does it give you some idea of
16 who gave him the money? Whoever he is giving the title to his
17 car is the person who he's either sounds like he's returning
18 the money -- some money. He's giving him the title to his
19 car. Would have liked to have given him the tax return.

20 What did the FBI do to investigate this? I asked
21 Agent Whitson on the stand: Do you know who got the title to
22 his car? Do you know who -- who was the recipient of this
23 note?

24 I'm not sure. Maybe, but I'm not sure.

25 Well, the chain went like this. When I put AK on the

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1 stand, I asked him when is the last time you've seen Soofi and
2 Simpson?

3 And again, the government didn't put AK on the stand.
4 We did. It's not my witness. He's the witness that you need
5 to try to get to the truth of what happened.

6 He gets on the stand and says that at 8:30 or 9:00
7 o'clock on May 1st, Simpson and Soofi stop by my house. They
8 bring me a bowl of soup.

9 Well, that confirms what Ali said, yeah, they were
10 cooking soup that night. But what else does he get? He gets
11 the key from Simpson and he gets an envelope from Simpson that
12 he doesn't know what's in it. And he doesn't really even
13 realize at the time that the car key is to the car.

14 And Simpson says to him: Give this envelope to
15 Saabir Nurse. Who is Saabir Nurse? He's a man that Simpson
16 has worked with.

17 Implication would be Saabir Nurse is the one who gave
18 him the money.

19 Then what happens?

20 AK says: I give the envelope to Saabir Nurse. I
21 give him the key to the car.

22 Then what happens?

23 Dunston Simpson says after my son died, Saabir Nurse
24 gave me the title to my son's car and the key.

25 Did the government put in any of that evidence? No.

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1 Because they don't want to know what the truth is. They want
2 a conviction.

3 The government put on Ali Soofi because they wanted
4 you to believe him. And if you do, my client is going to
5 prison for a long, long time.

6 Ali Soofi lied. Ali Soofi, I contend -- and I can't
7 get into his head. I'm not exactly sure why he did what he
8 did.

9 There's a number of things that could have motivated
10 him to do what he did. I think what it was was he was scared
11 to death that he had lived in that apartment with those guys
12 for 13 or 14 months. He knew everything that had gone on in
13 there. And he was afraid the FBI was going to be looking at
14 him and he has to make it go away. Make it put on the back of
15 somebody else.

16 It's almost like, you know, it can't be Mr. Ewell.
17 It's got to be Tom Robinson who did it. It's not him. It's
18 not the left-handed guy. It's Tom Robinson. He's the bad
19 guy.

20 Again, when you're cross-examining and trying to show
21 somebody is lying, it's not Perry Mason. They're not going to
22 fall apart on the stand. That just doesn't happen. But what
23 is important is for you to watch how they look, what their
24 demeanor is, how they act, where they're looking. I mean,
25 those are things that are all important and the Court has

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1 advised you of that in a jury instruction.

2 I spent a fair amount of time at the very beginning
3 of the cross-examination going through a time line because
4 those are important. Trying to get the time down. Have him
5 tell me what the time was. I asked him about when his brother
6 had bought the gun. And this is the transcript of this trial.
7 This is page 41 and I said:

8 And when did your brother buy his?

9 His was bought -- that was closer to the, you know,
10 the beginning of the year. I mean, because he had had it for
11 two months, so it was about February/March time that he had
12 had this weapon.

13 February or March?

14 Yes.

15 Now, we know that that's not right. We know that he
16 probably bought it in January because he's out there with
17 Sergio shooting in January, so he has to have it by then.

18 All right. Then I ask him a number of questions
19 which, you know when he hit the stand and he testified and he
20 sat there and cried for five or ten minutes at the very
21 beginning.

22 I mean, everybody felt sorry for him. You couldn't
23 help but feel sorry for him. He lost his brother. And I got
24 the sense from this jury that, boy, they're looking at me,
25 they're looking at my client, and they're thinking, wow, this

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1 is terrible.

2 But he lied. He goes on and says:

3 And you said he started coming and he --

4 The "he" is my client.

5 -- three to four nights a week and that he slept over
6 there three nights a week.

7 When did he start sleeping over there three nights a
8 week?

9 I mean it was -- I mean close around -- I'd say like
10 December time. I remember it was closer towards the end of
11 the year it was more frequent.

12 You never heard anybody who lived in that Cochise
13 house say that he was over sleeping at somebody else's house
14 three nights a week. Why? Because it didn't happen. I mean,
15 Carlos and Juan and Verdugo, everybody. Nobody says he's
16 gone. He's there.

17 Why in the world would a man who has a three-bedroom
18 house or a four-bedroom house go to an apartment -- a
19 one-bedroom apartment where there are three men and a boy
20 living on the weekends?

21 I mean, the testimony was is that Simpson is sleeping
22 on one end of a couch, Soofi is sleeping -- Ali Soofi is
23 sleeping on the other end of the couch, and Nadir is sleeping
24 in the bedroom. So he would give it up and go stay with them
25 and either sleep on the floor or one of them would sleep on

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1 the floor.

2 You have to use your common sense. It doesn't make
3 any sense.

4 Also, if he's having the flood at the house and he's
5 taking a shower, why doesn't he just go stay over there? Why
6 would he go take a shower? Why would he go to anybody's
7 house? He could just stay with them all the time because
8 that's where -- at least according to Ali Soofi that's where
9 he is staying. Why would he ever go stay with Mubarak for a
10 week or two? Why not just with them?

11 And there are small things that you ask somebody that
12 you hope to be able to use later in a closing. For instance,
13 in this case it says:

14 And is it your best recollection that they went
15 shooting in the morning?

16 Yes.

17 And then you saw them either in the afternoon or was
18 it in the evening?

19 It was later that evening.

20 Nobody ever testified they went shooting in the
21 morning except him on this one occasion. And why does this
22 become important? Because this is the time he says he sees
23 them cleaning the gun is that they've gone shooting in the
24 morning. They've come back at night. And my client is
25 teaching them how to clean these guns for some reason.

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1 Now, the government would have you believe that,
2 geez, when he saw that Simpson's gun jammed back two years
3 earlier at Sergio's house, this made him know that he had an
4 epiphany. Sergio -- or Simpson doesn't know how to take care
5 of guns. I need to teach him how to do it.

6 Now, what the point was nobody could unjam the gun.
7 I mean, they didn't know how to do it. Simpson didn't know
8 how to do it. He didn't know how to do it. Sergio didn't
9 know how to do it. They didn't know anything about guns.

10 He goes on and says he only went shooting -- I said:

11 Did you ever go shooting with your brother?

12 Not in Arizona.

13 Well, I'm going to tell you, he contradicts himself
14 later on and says, well, I went one time up near Sedona but it
15 was -- we were only with pistols.

16 Oh, but then, oh, yeah, then I went in Salt Lake City
17 which he says here. But then he says:

18 Oh, later on, yeah I did go with my dad and my
19 brother in Kansas.

20 The story keeps changing.

21 He was also one who seemed to be very fit. And I
22 asked him questions about running because he wanted you to
23 believe that he would go out running two, three days a week,
24 20 to 30 miles at time.

25 You might do that if you're an ultramarathon runner.

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1 And I asked him that and he said, no, I'm a marathoner. I run
2 marathons. Marathoners don't run 30 miles a week or 30 miles
3 at a time two or three times a week. It doesn't happen.

4 What ultimately happens in this matter is I then
5 start asking him about his first meeting with the FBI. Now,
6 he told us on direct examination that when he first heard
7 about the event in Garland, Texas, and he saw this, at first
8 he thought it wasn't his brother. He thought it was Simpson
9 and Abdul Malik.

10 That's what he told us. He saw it at about five or
11 six o'clock in the morning on May 4th. He meets with the FBI
12 at eleven o'clock. I played over and over -- or read over and
13 over again portions of the transcript. They asked him:

14 Is there anybody else that you were aware of that was
15 in that apartment that you think might have been involved in
16 something like this?

17 The guy who just told us that that morning he thought
18 it wasn't his brother, he thought it was Abdul Malik, what
19 does he say to the FBI?

20 No. Well, maybe AK.

21 Anybody else?

22 No.

23 And this is at a time when he's telling us that for
24 the prior four, five, six months he has been spending three or
25 four days a week over there at that place and he's sleeping

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1 over there two or three nights a week.

2 He's lying.

3 At page 84 of the transcript he says:

4 Let me direct your attention to page 16 of the
5 transcript of your testimony with the FBI or your statement to
6 the FBI that day. Take a look at page 16. Start on line 2
7 and read down. Do you see beginning on line 10 where you
8 said:

9 I mean, that's the only person other than that they
10 would leave. They would always leave and do stuff and they
11 wouldn't tell me.

12 Do you see that?

13 Yes.

14 Do you remember telling the FBI that on that morning?

15 No, I don't. I really can't remember a lot of what I
16 said.

17 And earlier:

18 Mr. Soofi, I have placed on the screen a portion of a
19 certified transcript of the conversation that you had with the
20 detectives on May 4th. Have you seen this document?

21 No.

22 Going down:

23 Okay. I'm going to ask you to look at page 15,
24 starting on line 12. Do you see the question from the
25 detective?

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1 Yes.

2 Would you read that to yourself?

3 Do you recall now that you told them that the only
4 guy that you recall coming to the house at the time was a
5 fellow by the name of AK.

6 I mean, I can't completely recall --

7 His answer was:

8 I can't completely recall my conversation at that
9 time. But, I mean, when I initially had come to the FBI, I
10 mean, my mind was incomplete --

11 And I said:

12 I'm sure you were upset. Your brother had just been
13 killed.

14 But I go on to ask him:

15 And the FBI are coming in there to investigate
16 because they're wanting to know, as they told you, if there
17 was anybody else that may be out there that would be involved
18 in something like this, correct?

19 Yes.

20 And you've just told us that for the prior three or
21 four weeks -- or three or four months -- that Abdul Malik was
22 sleeping at your brother's house two or three nights a week
23 and staying there three or four?

24 Yes.

25 But when they asked you if there was anybody else

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1 that could be involved, you don't mention Abdul Malik at all,
2 do you?

3 It was based off of --

4 Excuse me. You did not mention Abdul Malik the first
5 time you were interviewed by the FBI?

6 No, I didn't.

7 He's just told us on direct that he thinks it's Malik
8 that's there with Simpson. He's lying.

9 What happens over the course of this is that the lies
10 get bigger and bigger and bigger.

11 He goes home to Kansas. Never comes back to Phoenix.
12 They wire him up. He makes telephone calls. He makes a phone
13 call to my client, clearly trying to get evidence that they're
14 going to use to try to convict him.

15 You didn't hear the phone call. Why? Because
16 there's nothing bad on it. He didn't do anything. He then --
17 Ali then makes a number of phone calls to AK asking him a
18 number of things. And, yeah, AK tells him don't talk to the
19 FBI. I don't blame him. I wouldn't either. I won't.

20 And what happens? They're taping all of these
21 conversations. Except when they go to interview him in
22 January 29th, they fly out to Texas to go to his mother's
23 house, not to prepare him to come in here to testify, but
24 rather, just to see what he's going to say.

25 Now, he told us that he met with the FBI here the day

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1 after his brother is killed. Meets with them on the 5th at
2 the airport. He had, he said, at least three conversations
3 and one was video-linked while he was in Kansas. He's made
4 all these phone calls for them.

5 But then they fly out there and do they tape the
6 interview with him? No. Why not?

7 Because if you tape the interview, they have to turn
8 it over to the defense so the defense can see what he's going
9 to say.

10 By not taping it, they don't have to tell us. We get
11 their 302. We get their version of what he's going to say.
12 And for the very first time after having met with the FBI over
13 six times, he now decides on January 29th, oh, yeah, by the
14 way, I saw them -- I saw Abdul Malik teaching them how to
15 clean the guns.

16 That's the first time. And how do we know that's the
17 first time? Whitson tells us.

18 I asked him on cross-examination. I went through the
19 different meetings that happened in Kansas and I asked him:

20 Wasn't it -- was that the first time?

21 And he says yes.

22 Looking at Agent Whitson's testimony in this case,
23 page 124 from March 3rd. I asked him:

24 Okay. He --

25 And I'm referring to Ali Soofi.

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1 He never mentioned in that interview that he had seen
2 Abdul Kareem assisting or directing his brother and
3 Mr. Simpson in cleaning the weapons, did he?

4 I would have to review my report to --

5 You had a notebook. Do you want to look at
6 September 29th?

7 I have just reviewed my report from September 25th
8 and I don't see that he was asked that question or that he
9 provided any information related to cleaning or disassembling
10 or reassembling a weapon.

11 I then went on and I asked Agent Whitson:

12 And you did not audio or videotape that interview?

13 And we're talking about him now being in Texas in
14 January.

15 No, I did not.

16 That was the first time that he ever mentioned that
17 he had seen my client directing Mr. Soofi, his brother, and
18 Mr. Simpson in how to clean and disassemble any of these
19 weapons, correct?

20 I think that's correct.

21 Okay. And that interview took place on January 29th
22 of 2015.

23 And his response was:

24 I'm not sure if I have a copy of the report.

25 That's when that interview took place. That's the

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1 first time that he ever mentioned it.

2 He comes up with more and more statements trying to
3 put the blame on my client as time goes by. Every time the
4 FBI meets with him, he thinks of something new. I don't know
5 why, but it seems strange to me.

6 He told us on direct examination that my client was
7 the one who purchased the guns that he told the story that his
8 brother had gone out and bought the gun. He came in. My
9 client was with him. He was complaining how much money had
10 been spent. And my client said he had bought the guns.

11 When I asked him on cross-examination about his
12 conversations with the FBI he said:

13 And then you go on -- I'm reading from the transcript
14 of that May 4th meeting that he had with the FBI.

15 They asked him:

16 Are there any other weapons?

17 And you say: No, just the handgun. And he had
18 recently got the AK, probably five -- like five months ago.
19 It was like five months ago.

20 They asked him the question:

21 Do you know how he acquired it?

22 Mr. Soofi: Through Craigslist. He bought it on
23 Craigslist. Bought it through a private owner. It was
24 upgraded, you know. Those guys that have their upgraded
25 collection of weapons and they personally do stuff to them.

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1 Do you know about how much he paid?

2 It's like I think 700 bucks.

3 And I asked the question:

4 You didn't mention anything about Abdul Malik when
5 the agents are asking you when your brother purchased the AK,
6 did you?

7 Initially, in that first interview, no.

8 And you didn't tell them that he had gotten the money
9 from Abdul Malik either, did you?

10 No. With the questions that were asked, I -- and at
11 the time, like I said, it was -- I mean --

12 What he goes on to say -- and I could go through this
13 over again and I'm going to stop at this point -- but what he
14 goes on to say is they ask him:

15 Was there somebody that you think provided him the
16 money?

17 And he says: Yeah, it's an Imam.

18 Who do I think provided him the money? Somebody by
19 the name of Saabir Nurse. It seems pretty clear to me.

20 But we're not getting to that answer because the FBI
21 didn't follow up on it because they're not sure.

22 Who got that registration to the car?

23 I asked a lot of questions of Agent Whitson in this
24 case because of my concern about the rush to judgment by the
25 government.

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1 I asked them:

2 We've got a guy who says that my client is spending
3 three to four days a week over there, spending two to three
4 nights.

5 Did you canvass or anybody at the FBI go over there
6 and canvass the apartment complex to see if they -- anybody
7 saw him?

8 And his answer was: We did. Nobody recognized a
9 photograph of him.

10 You would think that if he was over there as Ali
11 Soofi said, somebody would have seen him that lived there, one
12 of the neighbors would have.

13 THE COURT: Are you at a --

14 MR. MAYNARD: I'm at a place to break.

15 THE COURT: -- at a convenient breaking point?

16 MR. MAYNARD: I am.

17 THE COURT: Thank you, Mr. Maynard.

18 Ladies and gentlemen, we'll go ahead and take our
19 afternoon break. We will reconvene in 15 minutes.

20 You are reminded not to discuss the case among
21 yourselves or with anyone else.

22 Please do not form any conclusions about the case
23 until you have heard the balance of the closing arguments and
24 begun your deliberations.

25 Court is in recess for 15 minutes.

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1 (Recess taken at 1:46 p.m.; resumed at 2:00 p.m.)

2 THE COURT: Thank you, ladies and gentlemen. Please
3 sit down. The record will show the presence of the jury,
4 counsel, and the defendant.

5 Mr. Maynard, you may continue.

6 MR. MAYNARD: Thank you, Your Honor.

7 I'm getting close to being done. There's a couple of
8 more areas I just need to touch on briefly.

9 I want to show you Exhibits 55, 56, and 57. These
10 were letters that were found in Soofi's and Simpson's
11 apartment. Again, these were put in by the defense. They
12 weren't put in by the government, although the government is
13 the one that found them.

14 These were letters written from an individual by the
15 name of Abu Jihad who is a convicted terrorist who is in
16 prison down in Florida and he clearly wrote this to Simpson.

17 And for some reason, Simpson happened to have copies
18 of letters from Abu Jihad to Saabir Nurse. He has two of
19 them. The same Saabir Nurse. And we have his address that
20 apparently got the registration to the car. That, apparently,
21 is the one who loaned the money to Simpson or gave him the
22 money for whatever he was going to do. And we've heard some
23 testimony about were they going to go to a Marine base?

24 I don't know where a Marine base is. I don't know if
25 Saabir Nurse gave them money to buy the weapons or to go

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1 somewhere else, but it would appear that they decided to use
2 that money to go to Texas and carry out this attack.

3 There were times in this case when I thought I was
4 in a fraud case. That somehow or another, this was a -- the
5 government was bringing an action against my client accusing
6 him of some sort of insurance fraud.

7 I guess the theory of the government was that somehow
8 or another he faked getting hit by a car on April 6th and that
9 he was then going to file this fraudulent insurance claim to
10 get money to promote the terrorism.

11 Well, the terrorist attack is on May 3rd. I mean, I
12 don't think anybody thinks you can get money from an insurance
13 company in three weeks -- or at least I haven't had that kind
14 of experience -- but we spent more time on these medical
15 records and bringing in the woman who ran into my client. She
16 stopped the car. She gave him her card. She contends now
17 that she didn't think she hit him.

18 We were -- I asked Agent Whitson had they gotten the
19 medical records from John C. Lincoln who he told them they had
20 gone to and he said no.

21 So we put in the medical records which were Exhibit
22 523. And, yes, he went to John C. Lincoln the day after the
23 incident occurred. It says clearly that the patient denies
24 falling to the ground. He states that he didn't feel any pain
25 yesterday but felt it when he woke up this morning. The

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1 patient has not tried anything to relieve the pain. He states
2 that he went to sleep and noticed I wasn't walking the same as
3 I was yesterday when he woke up.

4 He's feeling pain. Pain is subjective. He goes in.
5 He asks for an x-ray. He hasn't broken anything. They keep
6 him in the hospital. And John C. Lincoln, on page 60 under
7 the Clinical Impression is he's got a strained left hip, a
8 lumbar strain and a low-back strain. That's what the hospital
9 said.

10 Now, he goes to a chiropractor. But additionally,
11 Exhibit 524, he also goes to another doctor later on. And
12 there's the assessment. I mean, maybe these doctors are in
13 cahoots with him. I don't know. Maybe this is Saabir Nurse.
14 But these are the medical records. He got injured. He had
15 pain. This isn't a case about insurance fraud, although the
16 government seems to want to focus on that. The medical
17 records are there.

18 He then went on to see a chiropractor. He spent I
19 don't know how many visits, but it's like 10 or 12 visits to
20 the chiropractor. And when they release him, he says: I
21 state with confidence that Abdul Malik Abdul Kareem was truly
22 hurt as he claims he was and I did not find anything that
23 would lead me to believe otherwise. I found this patient's
24 accounting of his injury and clinical presentation to be
25 plausible and believable.

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1 Additionally, you heard Malik testify that on the
2 first of May, after he had gone to Jumu'ah and after he had
3 seen Simpson and Soofi, that he went to a doctor's
4 appointment. This is the doctor's appointment he went to. He
5 went to the chiropractor that day. I mean, the documents
6 support what his story has been.

7 Agent Whitson on cross-examination -- or on direct
8 examination said that he had found they had done forensic
9 accounting on the bank records of my client.

10 We didn't hear from a forensic accountant because
11 there really wasn't anything to talk about. My client
12 deposited \$10,000 on a particular day in November. He took
13 out 5,000 a couple days later. And Agent Whitson, for some
14 reason, found that activity to be suspicious. But when I
15 asked him whether or not he had checked to see if my client
16 had purchased a vehicle in that time period, he had not.

17 And I then asked him:

18 Did you look to see whether or not he had bought one
19 of his two moving trucks within a week of when he made that
20 withdrawal?

21 Yea. We did not find -- see evidence of that.

22 And did you look to see -- even in the documents that
23 you found in his truck, you didn't see any evidence of that?

24 Not -- yeah -- no evidence that I can recall.

25 Well, what we got through discovery from the FBI

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1 was -- and that "22" marker is an FBI marker -- is a receipt
2 for the purchase of a truck on November 13, 2014, consistent
3 with the date that he took the money out of the bank as he
4 testified to.

5 Again, the government isn't interested in the truth.
6 They're interested in a conviction. This is their document.
7 I mean, I don't know how he can't find it.

8 I spent a fair amount of time going through the
9 taping in this case because, look, it's -- it is incredible to
10 me that they have all of these interviews and then just before
11 somebody is going to take the stand and they're going to
12 testify, they don't tape those so that we know exactly what
13 they're going to say.

14 And as we talked about a few minutes ago in the case
15 of Ali Soofi, I asked him whether they taped Ali Soofi's when
16 they flew out to Dallas to meet with his mother and meet with
17 him before he came here and he told me no.

18 And I said was that your decision to make the
19 particular call not to tape him?

20 No.

21 Who made the decision?

22 That would be the decision of the prosecutor.

23 Why? Because they don't want to turn over what he
24 said. They want a conviction. They don't want the truth.

25 A count in this case centers around whether or not my

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1 client lied to the FBI on May 5th. And there's no question he
2 has always -- if you find evidence that he knew that there was
3 a Muhammad Drawing Contest prior to May 3rd, then he lied,
4 because he has always said I never heard of it before.

5 In fact, everybody except for four witnesses and I
6 believe Mr. Kohlmann might make five, said they never heard of
7 it before. I don't remember what Mr. Vidino said yesterday.
8 I think he said there was some advertisement that came out on
9 it but he didn't testify that he had seen that before then.
10 It could have been research that he did later.

11 My client said he didn't know they were going to
12 Texas. Nobody except Nathaniel Soofi has ever said that they
13 knew they were going to Texas.

14 One of the counts that the government has -- or the
15 statements is that the guns that -- let me not misstate it.
16 Let me see if I can --

17 No. 4 was knowing about the contest.

18 No. 3 is did not know in advance that Simpson and
19 Soofi planned to conduct an attack in Garland.

20 No. 2 was that before May 3rd, neither Soofi or
21 Simpson fired the weapons they used in connection with the
22 attack in Garland, Texas.

23 How would he know whether they had fired? He knew
24 they had fired weapons, but the question is, did he know those
25 were the weapons that were used in the attack?

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1 I specifically asked the agents: Had you sent the
2 weapons back? Did you have pictures of the weapons?

3 And Nash said no.

4 I mean, even if he knew that they had weapons, what
5 they used in that attack, I don't know how he could ever know.

6 So the question really boils down to the defendant
7 did not go shooting in the desert with Simpson and Soofi
8 before May 3rd of 2015.

9 He certainly did. There's no question about it.

10 And in the June 10th he says I went shooting with
11 them.

12 If we had a video or audio tape, we would know the
13 question that was asked. This question has always seemed
14 strange to me, because why is it that they went shooting in
15 the desert? Why wasn't it: Did you ever go shooting? Did
16 you ever see them shoot guns? Did you ever do any of those
17 things?

18 He contends he doesn't remember that question being
19 asked. He contends that he told the truth. And he certainly
20 told the truth on June 10th. And when you listen to it and
21 you listen to that audio, you don't hear Whitson or Nash
22 saying to him, geez, that's not what you told us before.
23 Nobody seemed surprised by the comment when he says, yes, I
24 went shooting in the desert.

25 Now, you know, clearly, as time goes on, we've had

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1 some more testimony about were they running, were they not.
2 That's not the statement that he's being accused of lying to
3 the FBI about. It's not whether they were running or not
4 running. It was whether or not they asked him the question:

5 Did you go shooting in the desert with Simpson and
6 Soofi? And did he say no?

7 And he says: I don't recall.

8 We don't have that videotape. We don't have that
9 audio tape. We don't even have the security tape that it
10 looked like this individual, Mr. Taylor, was telling Agent
11 Whitson he needed to get. Because he says that after they
12 determined they don't have the audio tape or the videotape,
13 there is still a security tape and we can look at that.

14 Yes, we can't hear, but you can look to see the
15 manner that he is answering. You can see his gestures.

16 I spoke with Jeff -- or Mendez this morning and told
17 him that you would require video export from the security
18 system DVR. He said no problem but requested that you send an
19 e-mail to Sherry McAllister. And Whitson says he's going to
20 do it.

21 I'll touch base with the case agents first. And if
22 they want me to proceed, I'm send an e-mail and get with Rich.

23 Why wouldn't you get it? He's just told you you're
24 going to need to get it. Why wouldn't you get it?

25 Additionally, another area that the FBI failed to

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1 adequately investigate is the AK47s. I asked him questions
2 about whether or not they had done searches with ATF and what
3 they had done in that regards.

4 What we knew from the limited discovery that we had
5 gotten was that there were several individuals in the Phoenix
6 area that in the January time frame were selling AK47s on
7 Craigslist for \$700. Well, do you think for a second that
8 those people are going to say, oh, yeah, that's the one I sold
9 to the terrorist who shot up people in Texas?

10 What they did was, I asked the question:

11 Did the FBI investigate Mr. Biaz to get the text
12 messages to see if he had texted anybody about this?

13 Yeah. We already had copies of the text messages
14 from one of the phones seized in Dallas.

15 They knew that Simpson and Soofi had been texting
16 with this fellow. And Biaz had an AK47 for sale on January
17 6th of 2015 here in Phoenix for \$700. But their contention is
18 it's my client who bought the gun.

19 I then went on to ask:

20 And that's how you came to go to him, correct?

21 Yes.

22 This was a case where the government had the bad guy
23 and then they went out to try to find the facts and make him
24 into a really bad guy. I mean, they thought from the time
25 that Stefan Verdugo came and talked to them that he was a bad

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1 guy. He was one of these co-conspirators.

2 And so the rest of their time, all they did was spend
3 it trying to sculpt the evidence to convict him, not to find
4 out what really had happened, not to figure out was it Biaz or
5 was it someone else that had sold the gun. Not to figure out
6 who had actually sold the ammunition. Not to figure out who
7 had provided the money.

8 I asked Agent Whitson at one point was he excited,
9 happy when they had gotten authorization from the Department
10 of Justice to file new charges in the Second Superseding
11 Indictment against my client for terrorism, which is the Count
12 5 count, providing material support to a foreign terrorist
13 organization.

14 And his response was no.

15 Well, so I said:

16 Were you happy when it was -- when it was the
17 government brought that second superseding indictment?

18 No.

19 Didn't you think this was a fantastic thing for the
20 government to do?

21 To do what?

22 Charge him with Conspiracy to Provide Material
23 Support to a Foreign Terrorist Organization?

24 No. I didn't think that was a happy thing to do.

25 However, on December 14th the government had gotten

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1 an e-mail -- Agent Whitson had gotten an e-mail from the U.S.
2 Department of Justice saying you have approval for Conspiracy
3 to Provide Material Support as outlined in your e-mail.

4 What's Whitson's response?

5 Fantastic news. Thank you, all three, for all the
6 hard work. I know that there is going to be a lot of people
7 in our organization -- the FBI -- who will be very pleased.

8 Now, look, somebody asked the question: Why did I
9 put that on there? Why did I ask that question?

10 The reason is is that the government became invested
11 in getting a conviction early on once they arrested him. They
12 didn't go out and gather the evidence and present it to you so
13 that you could determine what the truth was in this case.

14 This, to me, demonstrated that the government was
15 trying to get the most stringent, toughest charges they could
16 get. And to call somebody a terrorist, to call somebody now
17 in this environment, in this climate, whose name happens to be
18 Abdul Malik Abdul Kareem, that he is providing material
19 support to a foreign terrorist organization is awful.

20 If he did it, okay. But fantastic?

21 Now, did Agent Whitson lie? I don't know. I don't
22 know what he remembers. I don't know that he remembered
23 seeing it. But he certainly should have remembered that he
24 was excited about it. Why? Because these are career-making
25 cases. He can tell you he's got 12 other cases that he's

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1 handling. He doesn't have one like this.

2 Okay. When you went downstairs and you were picked
3 for this jury and you went through that jury questionnaire,
4 there were 150 of you. And I'm sure many of you read that
5 questionnaire and thought to yourself, gee, this is about
6 Islam, this is about terrorism. Wow, this might be sort of an
7 interesting case, although I don't know that I want to go four
8 or five weeks.

9 You walk upstairs and you saw all the press. Well,
10 this could be an interesting case. Then you walked inside and
11 you saw all the marshals. Wow. I don't know that I want to
12 be here with all those marshals around. In fact, we've had
13 people ask are we going to be sequestered about this.

14 I mean, terrorist cases are serious, serious cases.
15 To be charged with that, to be a Muslim-American and be
16 charged with terrorism, stuck for the rest of his life,
17 whether you find him innocent or not, if you find him not
18 guilty, he's still going to be tarred with that.

19 Probably the witness that we put on, to me that was
20 the most difficult one, was Nathan Soofi. No kid should go
21 through that. I mean, the thought that his father showed him
22 beheading videos, people being burned alive is just beyond
23 tragic to me.

24 And what I found really upsetting was that the
25 government knew this. And they had interviewed him. And I

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1 had asked Agent Whitson when he was on the stand in this case:

2 You've heard from three witnesses so far that said
3 that they should -- that they knew about the Muhammad Drawing
4 Contest before it occurred. Would you agree with that?

5 Could you say that again?

6 Yeah. We heard Mr. Verdugo said that he had heard
7 about the Muhammad Drawing Contest before it occurred.

8 Yes.

9 And the two juveniles Carlos and Juan both said that
10 they had heard about the drawing contest before it occurred.

11 Yes.

12 Okay. Did anyone else in your investigation, anyone
13 tell you that they had heard of this contest before it
14 occurred other than those two individuals -- those three
15 individuals?

16 No. Not that I recall.

17 And when Nathan Soofi got on the stand, he testified,
18 you know, okay, did you ever -- did your dad ever tell you
19 that -- about a contest where they were going to draw pictures
20 of the Prophet Muhammad?

21 He said: Yes.

22 Well, I remember he said like it was in Texas.

23 Did he tell you if he thought that that was a bad
24 thing or a good thing?

25 Yeah. He said it was a bad thing. He said he was

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1 going to go there. He was going to go to Texas and go there
2 and then he was going to go to the building and start
3 shooting.

4 But the part that was the most difficult is when I
5 went on to ask him:

6 Okay. Do you see the people that are sitting at this
7 table and I pointed to the prosecution and to Agent Whitson.

8 Yes.

9 Have you ever seen them before?

10 Yeah.

11 Did you go to their office two or three weeks ago and
12 talk to them?

13 Yeah.

14 Did you tell them the same thing that you've told us
15 today?

16 Yes.

17 Why didn't the government put Nathan Soofi on the
18 stand? Are they going to tell you that it was because they
19 didn't want to put him through this? They had interviewed him
20 earlier back in May. And they now interview him two or three
21 weeks before they bring him here.

22 He says my client, he never saw him spend the night
23 over there -- and granted, Nathan Soofi was only there on the
24 weekends -- he said he saw him a couple of times on occasion.
25 Couldn't remember his name, the guy who's supposedly over

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1 there three or four days a week, two or three nights.

2 Nathan Soofi helps in putting the lie to his uncle's
3 testimony. Nathan Soofi demonstrates that the government was
4 into this case for a conviction, not to try to find the truth.
5 I mean, otherwise, Agent Whitson would have told me, oh, yeah,
6 it was Nathan Soofi who told me two weeks ago or three weeks
7 ago when I interviewed him with the prosecutors that he knew
8 about this contest. But he had just told me no, he didn't.

9 One thing that's interesting -- and I'm going to put
10 this on and it's not a very clear picture -- but I want you to
11 look at it when you get into -- I can tell you that in the
12 documents that you are going to get -- and you have a very
13 large screen -- you can blow this up and it's very -- it's
14 much clearer than it is on this camera.

15 But if you'll recall, the government told us when
16 they showed us this picture that this man right here was my
17 client.

18 My client is not bald. I mean, he doesn't have a lot
19 of hair. It might be me, but it's not him.

20 This is Simpson. This is Ali Soofi. This is Nathan
21 Soofi. And this is someone else and I don't know who it is.
22 But they told you that that picture 250 was my client. It's
23 not.

24 This has been an interesting case and it's coming to
25 an end and we're probably all glad about that.

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1 But you folks really are -- I mean, the jury is the
2 buffer between the government and the rest of us. And the
3 government has tried to instill you with fear. And that's
4 what most of this has all been about. Not whether or not he's
5 a member of the conspiracy, but you should be afraid, and
6 therefore, you should convict somebody. He's got a bad name.
7 He hung around with people that did a bad thing.

8 They -- many of us in this room -- I'm sure on the
9 jury and all throughout this audience, we learn our sense of
10 justice, in part at least, from reading Harper Lee's immortal
11 To Kill a Mockingbird. And it was sort of -- I don't know if
12 it's poetic, but she died the first week of this trial which
13 was sort of interesting.

14 But it's in that book that we learn that there's
15 community pressures at times that are on people to do things
16 that aren't right. When Tom Robinson is convicted, everybody
17 who reads the book, everybody who sees the movie, they know
18 he's not guilty.

19 My client is a Muslim-American in a very bad
20 environment and climate right now. He is not guilty of these
21 charges.

22 Felon in Possession of a Weapon, it's not going to be
23 too hard for you.

24 The other four, he is not a co-conspirator. The
25 evidence does not support the government's contention. The

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1 government has withheld -- they did withhold evidence from you
2 that we brought to your attention.

3 When you look at the evidence without passion or
4 prejudice, you can only come to one conclusion. The
5 government has not proved that he is guilty beyond a
6 reasonable doubt.

7 And I believe that you will take that instruction
8 that you've gotten from the government, you'll look at all the
9 evidence in this case, and you'll go in there and you'll find
10 that he is not guilty beyond a reasonable doubt of those
11 charges that involve him traveling across state lines to
12 commit murder, conspiracy, aiding and abetting, aiding and
13 abetting or conspiracy with a terrorist organization or of
14 lying to the FBI.

15 Thank you.

16 (End of excerpt of proceedings.)

17 * * *

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C E R T I F I C A T E

I, ELIZABETH A. LEMKE, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 16th day of May, 2016.

s/Elizabeth A. Lemke
ELIZABETH A. LEMKE, RDR, CRR, CPE